



February 3, 2015

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## HOUSE BILL No. 1358

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DIGEST OF HB 1358 (Updated February 2, 2015 12:28 pm - DI 123)

**Citations Affected:** IC 6-8.1.

**Synopsis:** Garnishment of state tax refunds. Provides that if a debt has been reduced to a judgment in Indiana and the judgment has not been satisfied, set aside, or discharged in bankruptcy, the judgment creditor may garnish a state tax refund otherwise due to the debtor. Specifies the procedures that the judgment creditor must follow in obtaining the garnishment from the department of state revenue. Allows a writ of garnishment to be electronically filed with the department of state revenue.

**Effective:** July 1, 2015.

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**Cox, Steuerwald, Dermody,  
DeLaney**

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January 14, 2015, read first time and referred to Committee on Ways and Means.  
February 3, 2015, amended, reported — Do Pass.

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HB 1358—LS 6996/DI 107





February 3, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1358

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-8.1-9.6 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2015]:  
4 **Chapter 9.6. Garnishment of State Tax Refunds**  
5 **Sec. 1. As used in this chapter, "debt" means any amount due**  
6 **and owing under a judgment.**  
7 **Sec. 2. As used in this chapter, "debtor" means any person or**  
8 **legal entity who owes money to another, if:**  
9 (1) the debt has been reduced to a judgment in Indiana; and  
10 (2) the judgment has not been:  
11 (A) satisfied by court order;  
12 (B) set aside by court order; or  
13 (C) discharged in bankruptcy.  
14 **Sec. 3. As used in this chapter, "state tax refund" includes the**  
15 **amount of a state tax credit that is otherwise refundable to a**

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1 person.

2 Sec. 4. If a debtor owes a debt reduced to a judgment in Indiana,  
3 the judgment creditor may:

- 4 (1) have the department garnish a state tax refund payable to  
5 the debtor; and  
6 (2) have the state tax refund applied against the judgment  
7 debt;

8 as provided in this chapter.

9 Sec. 5. (a) To obtain a garnishment under this chapter, a  
10 judgment creditor must file a writ of garnishment with the court  
11 in which the original judgment lies.

12 (b) A writ of garnishment under this chapter must set forth the  
13 following:

- 14 (1) The full name of the debtor.  
15 (2) The last known address of the debtor.  
16 (3) The cause number of the original action on the debt.  
17 (4) The full Social Security number of the defendant, in  
18 compliance with the provisions of the Indiana Rules of Trial  
19 Procedure and judicial administrative rules concerning the  
20 filing of documents and information that are excluded from  
21 public access and are confidential.  
22 (5) The date on which the judgment was entered.  
23 (6) The present balance of the judgment after all payments  
24 have been applied.  
25 (7) A notice to the debtor of the debtor's right to object to the  
26 garnishment of the state tax refund not more than twenty-one  
27 (21) days after receipt of the disclosure as described in section  
28 6 of this chapter. The notice must also contain a box for the  
29 debtor to check to waive the debtor's right to a hearing and to  
30 waive the debtor's right to any objections under this chapter.

31 (c) The judgment creditor shall serve a writ of garnishment  
32 under this chapter on the debtor in accordance with the Indiana  
33 Rules of Trial Procedure.

34 (d) Upon approval by the court, the judgment creditor shall  
35 serve a writ of garnishment under this chapter on the department  
36 electronically.

37 Sec. 6. (a) Any objection to the writ of garnishment of the tax  
38 refund must be filed with the court not later than twenty-one (21)  
39 days after the date of service of the notice provided to the  
40 judgment debtor under section 5(b)(7) of this chapter.

41 (b) If the court rules against the judgment debtor, the judgment  
42 creditor may serve the writ of garnishment on the department.



1 Upon receipt of the writ of garnishment, the department shall  
 2 deposit the amount available for garnishment in the same manner  
 3 required in subsection (c).

4 (c) If an objection is not filed under subsection (a) not later than  
 5 twenty-one (21) days after the date of service on the debtor, the  
 6 court shall approve the writ of garnishment and the judgment  
 7 creditor may serve the writ on the department. The department  
 8 shall deposit the amount available for garnishment under the terms  
 9 of the writ with the judgment creditor's attorney of record in the  
 10 garnishment action, or, if the judgment creditor is not represented  
 11 by an attorney, with the judgment creditor or the judgment  
 12 creditor's designee.

13 Sec. 7. (a) If one (1) or more writs of garnishment are received  
 14 by the department for the same debtor, the department shall give  
 15 priority to the writ of garnishment that is received first by the  
 16 department.

17 (b) The department shall process each writ of garnishment in  
 18 order of the date of receipt until the state tax refund of the debtor  
 19 has been applied in its entirety.

20 Sec. 8. A judgment creditor must pay to the department a  
 21 processing fee of eight dollars (\$8) that is chargeable to the debtor  
 22 for each writ of garnishment under this chapter that is served on  
 23 the department. The judgment creditor must pay the fee at the  
 24 time the writ of garnishment is served on the department.

25 Sec. 9. (a) The department's liability to the judgment creditor  
 26 under a writ of garnishment under this chapter is limited to the  
 27 amount of the state tax refund due to the defendant for the period  
 28 the writ of garnishment is in effect, less any setoff, counterclaim,  
 29 or other demand of the state against the defendant. The  
 30 department is not liable for the department's negligence in  
 31 carrying out its duties under this chapter.

32 (b) After the department has deposited the amount available  
 33 under section 6(c) of this chapter, the department has no further  
 34 liability in the matter unless:

35 (1) a writ of garnishment is received by the department for a  
 36 subsequent year; or

37 (2) the amount deposited by the department under section 6(c)  
 38 of this chapter is in question.

39 Sec. 10. A setoff by a claimant agency under IC 6-8.1-9.5 or of  
 40 a child support obligation under IC 6-8.1-9.5 has priority over a  
 41 garnishment or any other action under this chapter.



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1358, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 34, after "(d)" delete "The" and insert **"Upon approval by the court, the"**

Page 2, line 35, delete "in accordance with the" and insert **"electronically."**

Page 2, delete line 36.

Page 2, line 39, delete "disclosure on the defendant." and insert **"notice provided to the judgment debtor under section 5(b)(7) of this chapter."**

Page 3, line 4, delete "defendant," and insert **"debtor, the court shall approve the writ of garnishment and"**.

Page 3, line 5, delete "shall" and insert **"may"**.

Page 3, line 7, delete "plaintiff's" and insert **"judgment creditor's"**.

Page 3, line 8, delete "plaintiff" and insert **"judgment creditor"**.

Page 3, line 9, delete "plaintiff" and insert **"judgment creditor"**.

Page 3, line 9, delete "plaintiff's" and insert **"judgment creditor's"**.

Page 3, line 22, delete "plaintiff" and insert **"judgment creditor"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1358 as introduced.)

STEUERWALD

Committee Vote: yeas 7, nays 0.

